

### REMARKS

In the October 5, 2007 Office Action, claims 1, 2, 4-11, 18-24, 26, 27, 29-31 and 33 remain rejected under 35 U.S.C. 103(a) as being unpatentable over German patent number DE 10013829 to Pfister and U.S. Patent No. 3,596,380 to Williams; and claims 12-17 remain rejected under 35 U.S.C. 103(a) as being unpatentable over Pfister and Williams and further in view of U.S. Patent No. 1,139,119 to Heidenreich.

By the present amendment, claims 1, 8 and 29 are amended, claims 4-6, 9, 18, 19, 22, 27 and 31 are canceled, and new claims 34 and 35 are added. That leaves claims 1, 2, 7, 8, 10-17, 20, 21, 23, 24, 26, 29, 30, 33, 34 and 35 pending in the application with claims 1 and 29 being independent.

The rejections of the prior art are respectfully traversed. In summary, none of the cited prior art, including Pfister and Williams, discloses a spinning top that includes, among other elements, a stem that lies in a recess of the top's body wherein the recess extends through substantially the entire body in a direction substantially parallel to the body's main axis, as recited in amended claims 1 and 29. Moreover, the combination of Pfister and Williams as proposed to in the Office Action, would not have been obvious to one of ordinary skill in the art. Each rejection is addressed in detail below.

#### Claim Rejections – 35 U.S.C. 103

Claims 1, 2, 4-11, 18-24, 26, 27, 29, 31 and 33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pfister in view of Williams. Independent claims 1 and 29, as amended, recites a spinning top with, among other elements, a body and a stem which lies in a recess in the body and the recess extending through substantially the entire body *in a direction substantially parallel to the main axis of the body*.

Because Pfister fails to teach the recess of the claimed invention, the Examiner cites to Williams. Williams, however, also fails to teach the recess of the claimed invention. Specifically, the “recess” of Williams, i.e. edge 24 (as identified in the office action) is disposed on the inside face of ring 13 and does not extend through the top 10 of Williams in a direction parallel to a main axis of top 10, as recited in the claimed invention. Concave edge 24 of Williams merely provides relief portions 26 and 26' that cooperate with opposing relief portions 24 and 24' in ring 12 to allow assembly and disassembly of those two rings. See col. 2:69 - col. 3:4. The body's main axis, as defined by the claimed invention, is parallel to the stem when in its first position, i.e. when the stem lies in the recess. No portion of the edge 24 of Williams of the ring 12 extends through substantially the entire body of the top 10 in the same direction as the main axis of top 10. The Examiner points to Fig. 2 of Williams as showing edge 24 extending through the top's body. The edge 24 extends in a direction *perpendicular* the body's main axis, however, in contrast to the claimed invention. Because the claimed invention recites that the main axis is substantially parallel to the stem in its first position (i.e. Fig. 1 of Williams), the edge 24 as shown in Fig. 2 of Williams does not meet the claimed invention.

Therefore, a prima facie case of obviousness has not been established because all of the claim limitations are not found in the proposed combination, i.e. a recess extending through substantially the entire body of the top in a direction substantially parallel to the top's main axis. Moreover, it would not have been obvious to combine Pfister and Williams as proposed to one of ordinary skill in the art. In particular, adding an additional outer ring to the body of Pfister would require significant modifications, much more than a mere change in shape of the Pfister toy. By adding a whole new element to the toy of Pfister, essential structural changes would be required. Therefore, one of ordinary skill in the art would not

find adding the outer ring of Williams to the toy of Pfister to be a mere change in shape. In view of the above, Applicant requests reconsideration and withdrawal of the rejection under 35 U.S.C. 103(a) of independent claims 1 and 29.

Dependent claims 2, 7, 8, 10, 11, 20, 21, 23, 26, 30 and 33 are allowable for the same reasons discussed above. Moreover, these claims recite additional features not found in the prior art. For example, dependent claim 30 recites that the first latch is a tab extending from the stem and the second latch is a tab extending from the body. Neither Pfister nor Williams discloses such first and second tabs. And it would have not been obvious to one of ordinary skill in the art to add the “recess” 24 of Williams to the top of Pfister to create a locking mechanism. As discussed above, the concave edge 24 of Williams provides a mechanism for assembly and disassembly of rings 12 and 13 by aligning portions 25 and 25' and 26 and 26'. The pins 119 of Pfister, however, prevent disassembly of inner and outer rings 11 and 12 of the toy. Accordingly, one of ordinary skill in the art would not find it obvious to add the edge 24 of Williams to either ring 11 and 12 of Pfister because the rings 11 and 12 of Pfister cannot be disassembled due to pins 119. Even assuming the Examiner's argument that the edge 24 could be a locking mechanism, the edge 24 or portions 25, 25', 26 and 26' are not tabs, as recited in claim 30.

Claims 12-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pfister in view of Williams and further in view of Heidenreich. Because claims 12-17 depend upon independent claim 1, Applicant believes they are allowable for the same reasons discussed above. Moreover, these claims recite additional features not found in the prior art.

#### New Dependent Claims

New dependent claims 34 and 35 depend from claims 1 and 29 respectfully, and are therefore allowable for the same reasons discussed above. Moreover, both claims also recite

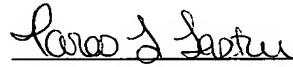
that the transverse arm portion extends from the center of the stem perpendicular thereto.

Neither Pfister nor Williams discloses these features. Accordingly, Applicant believes new claims 34 and 35 are allowable over the prior art.

In view of the foregoing, Applicant believes claims 1, 7, 8, 10-17, 20, 21, 23, 24, 26, 29, 30, 33, 34 and 35 are in condition for allowance. Prompt and favorable treatment is respectfully solicited.

Please charge any shortage or credit any overpayment of fees to Blank Rome LLP, Deposit Account No. 23-2185 (001058-00025). Any fees due are authorized above.

Respectfully submitted,



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Date: January 7, 2008